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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 907

JESSE C. DUKE

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED APRIL 20, 1937

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In United States Circuit Court of Appeals, Fourth Circuit

No. 4165

JESSE C. DUKE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Virginia, at Alexandria

Question certified to the Supreme Court of the United States by the Circuit Court of Appeals of the Fourth Circuit on the case stated

Statement of facts

This was a prosecution for violation of Sec. 137 of the Criminal Code, 18 U. S. C. A. 243, which provides:

"Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any letter or any communication, in print or writing, in relation to such issue or matter, shall be fined not more than $1,000, or imprisoned not more than six months, or both."

The prosecution was by information filed under oath by the United States Attorney. The appellant was convicted of the offense charged and from judgment and sentence thereon appeals to this court. One of the questions presented by the appeal is whether the offense charged, which is punishable by six months imprisonment or fine of $1,000, or both, may be prosecuted by information, in view
2 of Sec. 335 of the Criminal Code. 18 U. S. C. A. 541, which, as amended by the Act of Dec. 16, 1930, 46 Stat. 1029, provides:

"All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors: Provided, that all offenses the penalty for which does not exceed confinement in a common jail, without hard labor for a period of six months, or a fine of not more than $500, or both, shall be deemed to be petty offenses; and all such petty offenses may be prosecuted upon information or complaint."

Notwithstanding the decision in Thorm v. United States (C. C. A. 3d) 59 Fed. (2d) 419, cert. denied 287 U. S. 524, this court is divided and in doubt as to whether a misdemeanor may be prosecuted by information where the punishment therefor, although not infamous, may exceed a fine of five hundred dollars, or six months' imprisonment without hard labor, or both. As there are a large number of

such misdemeanors denounced by the Criminal Code (See Hearings before House Juidicary Committee, Seventieth Congress, First Session, January 17, 1928, on H. R. 5608, H. R. 8230, H. R. 8555, H. R. 8556, Serial 1, Page 31) the court deems the question of sufficient importance to certify to the Supreme Court.

Being divided and in doubt, therefore, this court respectfully certifies to the Supreme Court of the United States for its instruction and advice, the following questions of law, the determination of which is indispensable to a proper decision of the case.

Questions

1. May a misdemeanor, for which no infamous punishment is prescribed, be prosecuted by information, where the punishment therefor may exceed $500 fine or six months' imprisonment, without hard labor, or both?

3 2. May an offense under Sec. 137 of the Criminal Code be prosecuted by information?

This April 17, 1937.

JOHN J. PARKER,
United States Circuit Judge.
ELLIOT NORTHCOTT,
United States Circuit Judge.
MORRIS A. SOPER,
United States Circuit Judge.

[Clerk's certificate to foregoing certificate omitted in printing.]

Enter Jesse C. Duke, in forma pauperis. File No. 41,447. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 907. Jesse C. Duke vs. The United States of America. Certificate. Filed April 20, 1937. Term No. 907 O. T. 1936.

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